

HON. BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SAFETY STAR, LLC, a Missouri limited
liability company,

Plaintiff,

vs.

APTIBYTE, LLC, a Washington limited liability
company,

Defendant.

No. 2:23-cv-01399-BHS

**COMBINED JOINT STATUS
REPORT AND DISCOVERY PLAN**

JOINT STATUS REPORT AND DISCOVERY PLAN

Pursuant to This Court’s Scheduling Order, Plaintiff Safety Star, LLC (“Safety Star” or “Plaintiff”) and Defendant Aptibyte, LLC (“Aptibyte” or “Defendant”) submit the following Joint Status Report.

1. Statement of the Nature and Complexity of the Case

Plaintiff maintains this is a simple trademark infringement matter stemming from Defendant’s use of the B-SAFE and BSAFE BINGO registered trademarks (“the Marks”) to sell



1 competing bingo cards to Plaintiff's detriment. Defendant also has used the Marks in its Google
 2 advertisements and in images on its website. Discovery may reveal other locations as well. The B-
 3 SAFE trademark has been registered since December 20, 2005, with a claimed first-use date of
 4 March 1, 1992; and the BSAFE BINGO trademark has been registered since January 22, 2019,
 5 with a claimed first-use date of October 31, 2001. Both marks are incontestable under 15 U.S.C. §
 6 1065 and Plaintiff thus "may rely on incontestability to enjoin infringement" and this action "may
 7 not be defended on the grounds that the mark is merely descriptive." *See, e.g., Park 'n Fly v. Dollar*
 8 *Park & Fly*, 469 U.S. 189, 205, (1985). Plaintiff maintains that Defendant unlawfully used the
 9 Marks directly and provided encouragement to others to infringe as well. Complications may arise
 10 over the manner in which Defendant encouraged others, and the manner in which Defendant
 11 created infringing Google advertisements, but this is otherwise a simple case.
 12

13 Defendant contends that this case involves the misuse of alleged trademark rights in a
 14 term that is at best descriptive when used in the manner alleged in Plaintiff's complaint, namely,
 15 as the subject matter of bingo cards created by users of Defendant's website. Plaintiff cannot
 16 demonstrate commercial use of its alleged trademarks by either Defendant or the users of
 17 Defendant's website and therefore, Plaintiff's claims fail on that basis alone. Even if Plaintiff
 18 were able to demonstrate such commercial use, Plaintiff will be unable to demonstrate a
 19 likelihood of confusion. Additionally, there remain significant issues surrounding Plaintiff's
 20 ownership of and/or rights in the alleged trademarks at issue as well as representations made by
 21 Plaintiff to the USPTO in the registration of the marks. Defendant does not believe that this case
 22 is uniquely complex.
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2. Proposed Deadline for Joining Additional Parties

The parties propose that the deadline for joining additional parties, and for filing amended pleadings, be 7/23/2025.

3. Consent to United States Magistrate Judge

Yes.

4. Discovery Plan**(A) initial disclosures;**

Defendant provided its initial disclosures on June 16, 2025. Plaintiff provided its initial disclosures on June 18, 2025.

(B) subjects, timing, and potential phasing of discovery;

The subjects of discovery will extend into the claims, defenses, and issues raised by the parties. The parties do not propose phasing of discovery. The parties propose the following Schedule:

Event	Date
Jury trial (4 days)	6/29/2026
Deadline for joining additional parties / filing amended pleadings	7/23/2025
Disclosure of expert testimony under FRCP 26(a)(2)	12/1/2025
Disclosure of rebuttal expert testimony under FRCP 26(a)(2)	1/5/2026
All motions related to discovery must be filed by	1/12/2026
Discovery completed by	1/30/2026
All dispositive motions and motions challenging expert witness testimony must be filed by	2/27/2026

1 (C) electronically stored information;

2 The parties both have been exchanging electronically stored information and will continue
3 to do so. The parties will disclose ESI records as they are ordinarily kept in the course of their
4 respective clients' businesses whenever such records cannot be reasonably converted to PDF
5 documents and labeled with bates-stamping headers or footers. The parties have already identified
6 the locations of ESI in their respective initial disclosures.

7 (D) privilege issues;

8 The parties do not foresee any atypical issues with privilege and will address the procedures
9 regarding asserting privilege. If a disclosing party inadvertently discloses a privileged document,
10 the disclosing party must make a "clawback" request as soon as reasonably possible to the
11 receiving party and identify the privileged document. The parties have agreed to include a
12 provision addressing the inadvertent disclosure of privileged materials in the stipulated protective
13 order they will present to the Court. If a disagreement on the scope of privilege arises, the parties
14 agree to meet and confer before raising the issue with the court.

15 (E) proposed limitations on discovery;

16 The parties do not foresee a need to limit discovery beyond the federal and local rules.

17 (F) need for any discovery related orders;

18 The parties have already agreed to serve discovery related requests and responses and
19 notices (such as deposition notices and notices of subpoenas) via electronic mail without the need
20 for hard copies. The parties anticipate presenting a proposed stipulated protective order to the
21 Court. At this time, the parties do not see a need to enter any other discovery related orders.

22 5. **Parties' views, proposals, and agreements of the items in LCR 26(f)(1):**

23 (A) Prompt Resolution;

1 The parties anticipate prompt settlement discussions in light of discussion in the Rule 26(f)
2 conference of counsel.

3 (B) alternative dispute resolution;

4 The parties are generally in agreement that a prompt resolution through settlement
5 discussions and ADR would be advantageous and anticipate they will attempt some form of
6 settlement discussion or ADR at least once before trial. The parties do not wish to participate in
7 the individualized trial program set forth in LCR 39.2.

8 (C) related cases;

9 Case No. 3-23-cv-05440-DGE in the Western District of Washington (“Safety Star I”).

10 (D) discovery management;

11 The parties do not foresee the need for additional discovery management beyond what is
12 considered in the federal and local rules, and what has been described above and below.

- 13
- 14 i. The parties expect to disclose documents in the manner described above.
 - 15 ii. The parties agree to share documents obtained from third parties, and will meet and
16 confer regarding cost-sharing measures for such discovery should the need arise.
 - 17 iii. The parties do not see a need for regular discovery conferences.
 - 18 iv. The parties expect to raise any discovery disputes according to the expedited joint
19 discovery dispute format as considered by LCR 37(a)(2).
 - 20 v. The parties may request settlement assistance from a magistrate should the need
21 arise.
 - 22 vi. At this time, the parties do not request the abbreviated pretrial order.
 - 23 vii. The parties do not request other orders under LCR 16(b) and (c) at this time.
 - 24 viii. The parties have agreed to permit virtual depositions.
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1 (E) anticipated discovery sought;

2 The parties agree that the scope of discovery is to all facts relating to the claims,
3 counterclaims, and defenses of the parties, the asserted relief, and/or any other issues raised in the
4 pleadings and/or contentions as they presently exist or may be amended.

5 Safety Star will seek discovery surrounding its claims and defenses; Defendant's use of
6 Google Advertisements to create false and misleading association with Plaintiff; the nature and
7 extent of Defendant's encouragement of others to use Plaintiff's trademarks; and the nature and
8 extent of Defendant's profits associated with its unlawful acts as alleged.
9

10 Aptibyte will seek discovery on Plaintiff's claims and alleged damages and other relief
11 sought, including but not limited to the following general topics: Albert Culbertson's (and any
12 successor of Mr. Culbertson's) use, registration, and assignment of any "B-SAFE" trademarks;
13 Safety Star's use and registration of any "B-SAFE" trademarks; marketing of "B-SAFE" goods
14 and services; revenue generated by "B-SAFE" goods and services; Mr. Culbertson's and Safety
15 Star's efforts to protect their alleged rights in any "B-SAFE" trademarks; and any evidence of
16 alleged actual confusion and of other of the relevant likelihood of confusion factors.
17

18 (F) phasing motions;

19 The parties do not foresee the need to phase motions at this time.

20 (G) preservation of discoverable information;

21 The parties have been instructed to preserve discoverable information. The parties see no
22 issues related to preservation.
23

24 (H) privilege issues / inadvertent disclosures of privileged information

25 See Section 4(D) above.

26 (I) Model Protocol for Discovery of ESI; and
27

See Section 4(C).

(J) Alternatives to Model Protocol.

See Section 4(C).

(K) Class Action Issues.

Not applicable.

6. Date by which discovery can be completed

The parties believe that discovery can be completed by 1/30/2026.

7. Whether the case should be bifurcated

The parties do not propose any bifurcation in the case at this time.

8. Whether the pretrial statements and pretrial order should be dispensed with

At this time, the parties do not propose dispensing with the pretrial statements and pretrial order called for by Local Civil Rules 16(e), (h), (i), and (k), and 16.1.

9. Any other suggestions for shortening or simplifying the case

At this time, other than stated herein, the parties have no further suggestions for shortening or simplifying the case but have agreed to meet and confer regarding such suggestions should the opportunity arise.

10. Date the case will be ready for trial

The parties agree that the case will be ready for trial on 6/29/2026, which is approximately one year from the filing of this Joint Status Report, per the Court's Order Regarding Initial Disclosures, Joint Status Report, Discovery Depositions and Early Settlement (Dkt. 14 at p. 3).

11. Whether the trial will be jury or non-jury.

Both parties have requested a jury trial.

12. The number of trial days required.

The parties anticipate needing four (4) days of trial testimony.

13. The names, addresses, and telephone numbers of all trial counsel.**Counsel for Plaintiff:**

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14. Dates on which trial counsel may have complications to be considered in setting a trial date

Counsel for Plaintiff currently has no dates that would present complications in setting a trial date approximately one year from the filing of this Joint Status Report.

Counsel for Defendant currently has no dates that would present complications in setting a trial date approximately one year from the filing of this Joint Status Report.

15. Status of service on all defendants

All Defendants have been served.

16. Whether any party wishes a scheduling conference before a scheduling order is entered

The parties do not wish a scheduling conference before a scheduling order is entered.

1 **17. The dates each nongovernmental corporate party filed its disclosure statement**
2 **pursuant to Fed. R. Civ. P. 7.1 and Local Rule 7.1**

3 Plaintiff filed its disclosure statement on September 12, 2023 (Dkt. 4). Defendant filed its
4 disclosure statement on September 28, 2023 (Dkt. 12).

5 DATED June 23, 2025.

6
7
8 By  _____

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